

FILED

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SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	NO. CR 17-0278 JD
Plaintiff,)	PLEA AGREEMENT
v.)	
JUSTIN E. HUBBARD,)	
Defendant.)	

I, Justin E. Hubbard, and the United States Attorney's Office for the Northern District of California (hereafter "the government") enter into this written Plea Agreement (the "Agreement") pursuant to Rule 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

The Defendant's Promises

1. I agree to plead guilty to Count One of the captioned Information charging me with me with destruction, alteration, or falsification of records in federal investigations and bankruptcy, in violation of 18 U.S.C. § 1519. I agree that the elements of the offense are as follows: (1) I knowingly altered, falsified, or made a false entry in a record or document; (2) with the intent to impede, obstruct,

PLEA AGREEMENT
CR 17-0278 JD

1 or influence the investigation or proper administration of any matter or in contemplation of or in relation
2 to any such matter; (3) within the jurisdiction of an agency of the United States.

3 I agree that the maximum penalties are as follows:

- | | | | |
|---|----|---------------------------------|-------------------------------|
| 4 | a. | Maximum prison term | 20 years |
| 5 | b. | Maximum fine | \$250,000, or twice gain/loss |
| 6 | c. | Maximum supervised release term | 3 years |
| 7 | d. | Restitution | To be determined |
| 8 | e. | Mandatory special assessment | \$100 |
| 9 | f. | Forfeiture | |

10 2. I agree that I am guilty of the offense to which I am pleading guilty, and I agree that the
11 following facts are true:

12 I have been working in the nuclear industry since approximately 1989, after completing my
13 formal education. During my twenty-five years in the industry, I have conducted decontamination work
14 at nuclear power plants, medical laboratories handling radioactive material, and a 'Superfund Site,'
15 among other activities. During that same period, I have received training in radiation contamination
16 control, the proper handling of radiological waste, and the assessment of radionuclides in the
17 environment. I have also supervised others in these activities.

18 In approximately 1994 or 1995, I began performing nuclear remediation work at the former
19 Hunter's Point Naval Shipyard ("HPNS"), located in the Bayview District of San Francisco, California.
20 My first employer at HPNS was New World Environmental, Inc. ("New World"). After approximately
21 four years with New World, I was hired by Tetra Tech EC, Inc. ("Tetra Tech"), as a Radiological Task
22 Supervisor at HPNS. As a supervisor at Tetra Tech, I was in charge of a team of radiation control
23 technicians ("RCTs") engaged in the radiological remediation of soil at HPNS. I was aware that Tetra
24 Tech had been hired by the United States Navy ("U.S. Navy") to perform the radiological remediation at
25 HPNS. My employment with Tetra Tech terminated in December 2013.

26 While working for Tetra Tech, I reported to a Tetra Tech HPNS Project Manager, and a Tetra
27 Tech HPNS Lead Field Superintendent, among others. The RCTs I supervised worked for Tetra Tech
28 subcontractor Radiological Survey & Remedial Services, LLC ("RSRS").

1 I understood that the radiological remediation of HPNS was being conducted by Tetra Tech for
2 the U.S. Navy under established sampling guidelines and protocols. My job at HPNS required me to
3 comply with a Task Specific Plan ("TSP") which identified, for a Building Series or Area, the number
4 and type of survey units that were to be sampled at specific locations. In general, I would receive
5 directions on a daily basis, including a survey unit map, identifying the sampling locations for a
6 particular survey unit. Once the Tetra Tech engineers marked these locations, I would supervise the
7 sampling of them by my RCTs.

8 The RCTs were expected to take soil from each marked sampling location, bag and label the
9 sample, and then send it to a laboratory for an analysis of, among other data, any radionuclides of
10 concern. Chain of custody ("COC") forms and tags showing the precise location of each soil extraction
11 as identified on the survey map were required for each sample. I was aware that information from the
12 chain of custody forms, including the sample locations, was incorporated into the sampling analysis
13 reports prepared by Tetra Tech and emailed to the U.S. Navy.

14 During my work at HPNS, I was aware of U.S. Navy testing protocols which mandated that if a
15 laboratory analysis determined a sample of collected soil to be "hot"—that is, containing a higher-than-
16 allowable level of radionuclides of concern—then additional remediation, including more sampling, of
17 that survey unit was to be undertaken until all new collected samples passed laboratory analysis.

18 During 2012, in direct contravention of the relevant U.S. Navy testing protocols, I obtained
19 "clean" dirt from an area north of Buildings 253 and 211 at HPNS and substituted it for dirt taken from
20 survey units in the North Pier area of HPNS. To effect this illegal switching, I drove my company truck
21 to the area north of Buildings 253 and 211 and filled a five-gallon bucket with "clean" serpentinite soil
22 from an area I knew to be outside the relevant marked survey unit. I then drove the clean dirt back to a
23 "conex box"-style trailer. Once I was inside the conex, I emptied the "legitimate" soil samples
24 previously collected by RCTs from their sampling bags into an empty bucket, and substituted the clean
25 serpentinite soil into each sampling bag.

26 I did not alter the markings made earlier on the sampling bags by the RCTs, which included the
27 sample number, time, and date. I then placed a bar code sticker on an outer bag for each sample. A
28 copy of this bar code sticker was also affixed to a chain of custody ("COC") form for each sample. The

1 sticker was meant to identify the survey unit location the soil was taken from. By switching the soil
2 inside the sampling bag, I knew that the data on the COCs, many of which I signed, was false. I also
3 knew that the false data on these COCs was incorporated into maps and reports made by Tetra Tech and
4 submitted to the U.S. Navy for the purpose of demonstrating that the area had been successfully
5 remediated.

6 On or about May 31, 2012, I fraudulently switched soil for four survey units on the North Pier of
7 HPNS: Survey Units 1, 8, 10, and 11. For Survey Unit 1, I specifically recall replacing the soil samples
8 28-47 with soil I had collected from a clean area.

9 3. I agree to give up all rights that I would have if I chose to proceed to trial, including the
10 rights to a jury trial with the assistance of an attorney; to confront and cross-examine government
11 witnesses; to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth
12 Amendment claims; to any further discovery from the government; and to pursue any affirmative
13 defenses and present evidence.

14 4. I agree to give up my right to appeal my conviction, the judgment, and orders of the
15 Court, as well as any aspect of my sentence, including any orders relating to forfeiture and/or restitution,
16 except that I reserve my right to claim that my counsel was ineffective.

17 5. I agree not to file any collateral attack on my conviction or sentence, including a petition
18 under 28 U.S.C. § 2255 or 28 U.S.C. § 2241, except that I reserve my right to claim that my counsel was
19 ineffective. I also agree not to seek relief under 18 U.S.C. § 3582.

20 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is entered. I
21 understand that by entering into this Agreement: (a) I agree that the facts set forth in Paragraph 2 of this
22 Agreement shall be admissible against me under Fed. R. Evid. 801(d)(2)(A) in any subsequent
23 proceeding, including at trial, in the event I violate any of the terms of this Agreement, and (b) I
24 expressly waive any and all rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 with regard to the
25 facts set forth in Paragraph 2 of this Agreement in such subsequent proceeding. I understand that the
26 government will not preserve any physical evidence obtained in this case.

27 7. I understand that the Court must consult the United States Sentencing Guidelines and
28 take them into account when sentencing, together with the factors set forth in 18 U.S.C. § 3553(a). I

1 also understand that the Court is not bound by the Guidelines calculations below; the Court may
2 conclude that a higher Guidelines range applies to me, and, if it does, I will not be entitled, nor will I ask
3 to withdraw my guilty plea. I further agree that regardless of the sentence that the Court imposes on me,
4 I will not be entitled, nor will I ask, to withdraw my guilty plea. I will not request a downward departure
5 under the Sentencing Guidelines from the total offense level computed by the Court, although I reserve
6 the right to seek a downward variance based on the factors set forth in 18 U.S.C. § 3553(a). I
7 understand that the government is free to oppose any such request.

8 The following describes the parties' agreements regarding the applicable Sentencing Guidelines
9 calculations. As described further below, the parties have reached no agreement regarding whether the
10 two-level upward adjustment for abuse of a position of trust or use of a special skill under U.S.S.G. §
11 3B1.3 applies, and the parties will submit arguments to the Court regarding the application of this
12 adjustment. Accordingly, this possible Guidelines adjustment is bracketed below. I agree that my
13 adjusted offense level may be as low as 13 and as high as 15.

14 The parties have reached no agreement regarding my Criminal History Category.

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|----|----|--|-----------|
| 15 | a. | Base Offense Level, U.S.S.G. § 2J1.2(a): | 14 |
| 16 | b. | Fabrication of substantial number of records, U.S.S.G. § 2J1.2(b)(3) | 2 |
| 17 | c. | Adjustments under U.S.S.G. Ch. 3 (e.g. role in the offense) | |
| 18 | | -3B1.3: Abuse of Position of Trust or Use of Special Skill | [2] |
| 19 | d. | Acceptance of Responsibility: | -3 |
| 20 | | If I meet the requirements of U.S.S.G. § 3E1.1, I may be entitled to a three | |
| 21 | | level reduction for acceptance of responsibility, provided that I forthrightly | |
| 22 | | admit my guilt, cooperate with the Court and the Probation Office in any | |
| 23 | | presentence investigation ordered by the Court, and continue to manifest an | |
| 24 | | acceptance of responsibility through and including the time of sentencing. | |
| 25 | e. | Adjusted Offense Level: | [13 / 15] |

26 8. I agree that regardless of any other provision of this Agreement, the government may and
27 will provide the Court and the Probation Office with all information relevant to the charged offense and
28 the sentencing decision, including any victim impact statements and letters from the victims, and/or their
friends and family.

1 9. I agree that I will make a good-faith effort to pay any fine, forfeiture, or restitution I am
2 ordered to pay. I agree to pay the special assessment at the time of sentencing.

3 10. I agree not to commit or attempt to commit any crimes before sentence is imposed or
4 before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial release; not
5 to intentionally provide false information to the Court, the Probation Office, Pretrial Services, or the
6 government; and not to fail to comply with any of the other promises I have made in this Agreement. I
7 agree that if I fail to comply with any promises I have made in this Agreement, then the government will
8 be released from all of its promises in this Agreement, including those set forth in the Government's
9 Promises Section below, but I will not be released from my guilty plea.

10 11. I agree that this Agreement contains all of the promises and agreements between the
11 government and me, and I will not claim otherwise in the future. No modification of this Agreement
12 shall be effective unless it is in writing and signed by all parties.

13 12. I agree that the Agreement binds the U.S. Attorney's Office for the Northern District of
14 California only, and does not bind any other federal, state, or local agency.

15 The Government's Promises

16 13. The government agrees not to file any additional charges against the defendant that could
17 be filed as a result of the investigation that led to the captioned Information.

18 14. The government agrees to recommend a sentence within the range associated with the
19 Guideline calculations set out in paragraph 7 above, unless the defendant violates the terms of the
20 Agreement above or fails to accept responsibility.

21 The Defendant's Affirmations

22 15. I agree that my participation in the District Court's Conviction Alternative Program is not
23 appropriate and that I will not request to be considered for and will not participate in that program as a
24 result of my convictions for these offenses.

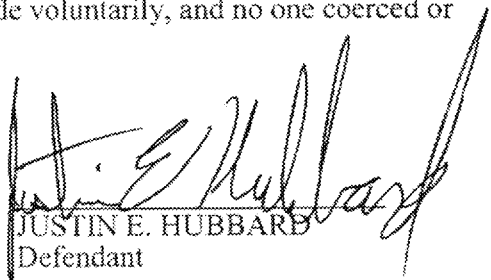
25 16. I confirm that I have had adequate time to discuss this case, the evidence, and the
26 Agreement with my attorney and that my attorney has provided me with all the legal advice that I
27 requested.

28 17. I confirm that while I considered signing this Agreement, and at the time I signed it, I

1 was not under the influence of any alcohol, drug, or medicine that would impair my ability to understand
2 the Agreement.

3 18. I confirm that my decision to enter a guilty plea is made knowing the charges that have
4 been brought against me, any possible defense, and the benefits and possible detriments of proceeding to
5 trial. I also confirm that my decision to plead guilty is made voluntarily, and no one coerced or
6 threatened me to enter into this Agreement.

7
8 Dated: 5-18-2017


JUSTIN E. HUBBARD
Defendant

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10
11
12 Dated: 5/18/17

BRIAN J. STRETCH
United States Attorney


PHILIP J. KEARNEY
MATTHEW L. MCCARTHY
Assistant United States Attorneys

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15 19. I have fully explained to my client all the rights that a criminal defendant has and all the
16 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all
17 the rights my client is giving up by pleading guilty, and, based on the information now known to me, my
18 client's decision to plead guilty is knowing and voluntary.

19
20 Dated: 5-18-2017

By 
for KENNETH LONG
Attorney for Defendant